

GOVERNMENT PROPOSED JURY INST. NO. 195

Concealing Property -- Offense Charged

The indictment sets forth _____ counts or charges.

Count I charges that on or about _____, 19__, in the _____ District of _____, the defendant, _____, willfully concealed goods and commodities, to wit, [*Describe goods and commodities concealed*] for and in respect of which a tax of the United States is imposed, **1** with the intent to evade or defeat the assessment or collection of said tax.

Devitt and Blackmar, *Federal Jury Practice and Instructions* (3d Ed. 1977), Section 38.01 (modified)

NOTE

1 Section 7206(4) also provides "or any property upon which levy is authorized by Section 6331." Where appropriate, the instruction should be modified to follow the wording of the indictment.

GOVERNMENT PROPOSED JURY INST. NO. 196

Statute Defining Offense

Section 7206(4) of the Internal Revenue Code provides, in part, as follows:

Any person who -- * * * [r]emoves, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by section 6331, with intent to evade or defeat the assessment or collection of any tax imposed by this title * * shall be guilty [*of an offense against the laws of the United States*].

GOVERNMENT PROPOSED JURY INST. NO. 197

Concealment of Property -- Elements

In order to sustain its burden of proof for the crime of willfully concealing various properties as described in the indictment, the government must prove the following four elements beyond a reasonable doubt:

One: There was an outstanding assessment for income taxes against the defendant;

Two: The defendant owned or had an interest in the property in question upon which levy was authorized;

Three: The defendant removed, deposited or concealed, or was concerned in removing, depositing or concealing the property in question; and

Four: With the intention to evade and defeat the collection of the assessed taxes.

26 U.S.C. § 7206(4)

See also Section 14.03, *supra*

GOVERNMENT PROPOSED JURY INST. NO. 198

Concealing Property -- Levy Authorized

Section 6331 of the Internal Revenue Code provides, in part, that:

If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful * * * to collect such tax * * * by levy upon all property and rights to property (except such property as is exempt * * *) belonging to such person or on which there is a lien * * * for the payment of such tax. * * *

Certain property, however, is exempt from levy for taxes. So far as you are concerned, the following is exempt: *[refer to Section 6334 to determine the appropriate exemptions with respect to the issues and evidence in a given case.]*

26 U.S.C. §§ 6331 and 6334

GOVERNMENT PROPOSED JURY INST. NO. 199

Willfulness

To find the defendant guilty of violating Section 7206(4), you must not only find that the defendant did the acts of which he [she] stands charged, but you must also find that the acts were done willfully by the defendant.

The word "willfully," as used in this statute, means a voluntary, intentional violation of a known legal duty. In other words, the defendant must have acted voluntarily and intentionally and with the specific intent to do something the law forbids, that is to say, with a purpose either to disobey or to disregard the law.

In determining the issue of willfulness, you are entitled to consider anything done or omitted to be done by the defendant and all facts and circumstances in evidence which may aid in the determination of his [her] state of mind. It is obviously impossible to ascertain or prove directly the operations of the defendant's mind; but a careful and intelligent consideration of the facts and circumstances shown by the evidence in any case may enable one to infer what another's intentions were in doing or not doing things. With the knowledge of definite acts, we may draw definite logical conclusions.

We are, in our daily affairs, continuously called upon to decide from the acts of others what their intentions or purposes are, and experience has taught us that frequently actions speak more clearly than spoken or written words. To this extent, you must rely in part on circumstantial evidence in determining the guilt or innocence of the defendant.

In this regard, there are certain matters which you may consider as pointing to willfulness, if you find such matters to exist in this case. By way of illustration only, willfulness may be inferred from conduct such as *[set forth examples appropriate under the evidence, e.g., making false entries or alteration, or false invoices or documents, concealment*

of assets or covering up sources of income, handling one's affairs to avoid making the records usual in transactions of the kind] and any conduct the likely effect of which would be to mislead or to conceal.

I give you these instances simply to illustrate the type of conduct which you may consider in determining the issue of willfulness. I do not by this instruction mean to imply that the defendant did engage in any such conduct. It is for you as the trier of the facts to make this determination, as to whether the defendant did or did not.

Devitt and Blackmar, *Federal Jury Practice and Instructions* (4th Ed. 1992), Section 17.07 (modified and supplemented)

Devitt and Blackmar, *Federal Jury Practice and Instructions* (4th Ed. 1990), Section 56.20 (modified)

Pattern Jury Instructions, Fifth Circuit (1990 Ed.), Section 2.88, pp. 201-202 (Note)

Federal Criminal Jury Instructions of the Seventh Circuit (1980 Ed.), Section 6.03 (modified)

Manual of Model Criminal Jury Instructions for the District Courts of the Eighth Circuit (1992 Ed.), Section 7.02 (Comment)

Manual of Model Jury Instructions for the Ninth Circuit (1992 Ed.), Section 5.05 (Comment)

Pattern Jury Instructions, Criminal Cases, Eleventh Circuit (1985 Ed.), Basic Instructions, Instruction No. 9.1, p. 22 (modified)

Cheek v. United States, 498 U.S. 192, 201 (1991)

United States v. Pomponio, 429 U.S. 10, 12 (1976)

United States v. Bishop, 412 U.S. 346, 360 (1973)

Spies v. United States, 317 U.S. 492, 499 (1943)

United States v. Ashfield, 735 F.2d 101, 105 (3d Cir.), *cert. denied sub nom.*, *Storm v. United States*, 469 U.S. 858 (1984)

United States v. Conforte, 624 F.2d 869, 875 (9th Cir.), *cert. denied* 449 U.S. 1012 (1980)

United States v. Ramsdell, 450 F.2d 130, 133-134 (10th Cir. 1971)

United States v. Spinelli, 443 F.2d 2, 3 (9th Cir. 1971)

COMMENTS

1 It is not necessary to define the term "willfully" in a tax case in terms of "bad purpose" or "evil motive." *United States v. Pomponio*, 429 U.S. 10, 12 (1976). *See also* Section 8.06[1], *supra*.

2 Willfulness has the same meaning in the felony and misdemeanor sections of the Internal Revenue Code. *United States v. Pomponio*, 429 U.S. 10, 12 (1976).

3 For examples of conduct from which willfulness may be inferred, *see* Section 8.06[3], *supra*.